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 Mattel, Inc. and Fisher-Price, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

Quia Corporation,

Plaintiff/Counter-Defendant,

vs.

Mattel, Inc. and Fisher-Price, Inc.

Defendants/Counterclaimants.

Case No. CV10-1902 JF (HRL)

**NOTICE OF COMPLIANCE AND  
 REQUEST FOR APPROVAL REGARDING  
 DISCLAIMER FOR ONLINE  
 ADVERTISING**

1 Fisher-Price, Inc. and Mattel, Inc. (“Defendants”) are making their best efforts to comply with  
 2 Court’s directive that Defendants incorporate a disclaimer into their online advertisements for the iXL  
 3 toy product. The Court’s June 15<sup>th</sup> Order outlined the following disclaimer:

4 Fisher-Price’s iXL Learning System and related software bear no  
 5 relationship to IXL, “The Web’s #1 Math Practice Site,” owned and  
 operated by Quia Corporation and accessible at <http://www.ixl.com>.

6 Defendants are very hesitant to proclaim that Quia’s IXL website is “The Web’s #1 Math  
 7 Practice Site,” as there appears to be no substantiation for that claim. In fact, Quia’s president Mr.  
 8 Mishkin admitted in his deposition that the alleged “#1” ranking was not based on any study, analysis,  
 9 or independent ranking, but based on Mr. Mishkin’s opinion alone:

10 **Q:** ... So, my question is: Is the "No. 1 math practice site," this is according to Mishkin?

11 **A:** Yeah, it's according --

12 **Q:** Okay.

13 **A:** It's according to me.

14 **Q:** Okay.

15 **A:** There's no third party --

16 **Q:** Okay.

17 **A:** -- who gave us that distinction.

18 Mishkin Depo. 49:6-52:15 (pages attached as Exhibit A hereto).

19 Defendants are concerned about creating the perception that they endorse Quia’s claim or that  
 20 Defendants’ are complicit in perpetuating it. Additionally, Defendants note that the “Web’s No. 1  
 21 Math Practice Site” language did not appear in any disclaimer suggested by Quia. *See* Docket No. 60  
 22 at pg. 2.

23 Accordingly, Defendants have made a slight revision to the disclaimer that removes the above-  
 24 language but describes IXL as an “Online Math Practice Site,” which Defendants would ask the Court  
 25 to approve:

26 Fisher-Price’s iXL Learning System and related software bear no  
 27 relationship to the IXL Online “Math Practice Site,” owned and operated  
 28 by Quia Corporation and accessible at [www.ixl.com](http://www.ixl.com).

1 To ensure that a disclaimer is posted in a timely fashion, Defendants are incorporating one with  
2 the above-language, but should the Court decide that it wants the verbatim language in its June 15th  
3 Order, Defendants are prepared to immediately change the disclaimer.

4 Dated: June 28, 2010

Respectfully submitted,

5 HOWREY LLP

6  
7 By: /s/ Bobby A. Ghajar

8 Bobby A. Ghajar

9 Robert N. Phillips

Peter Moll

10 Attorneys for Defendants/Counterclaimants

11 Mattel, Inc. and Fisher-Price, Inc.  
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# **EXHIBIT A**



1 A. Uh-huh.

2 Q. "Excel in life"; right?

3 A. Right.

4 Q. "Where I excel in math"; right?

5 A. Yes.

6 Q. And then, "The Web's No. 1 Math Practice Site";  
7 right?

8 A. That's right.

9 Q. Is it, in fact, true that Quia's IXL Math is the  
10 Web's No. 1 math practice site?

11 A. Well, that's our marketing slogan.

12 I think it's the best math practice site.

13 As far as how you define "No. 1," it's -- I  
14 would say it's the most complete math practice site.

15 There are about -- there are over a thousand  
16 different math topics or math skills that you can  
17 practice in the grade levels we cover, pre-K through  
18 6th grade.

19 So, I don't know of any site that has more than  
20 that.

21 As far as number of visitors, number of  
22 subscribers, I don't know.

1 law firm, Howrey, and you'll see on there, "Howrey, the  
2 No. 1 IP firm -- intellectual property firm -- in the  
3 world."

4 That's according to Chambers or it's according  
5 to this or according to about five or six different  
6 sources, not that I'm trying to do an advertisement.

7 So, my question is: Is the "No. 1 math practice  
8 site," this is according to Mishkin?

9 A. Yeah, it's according --

10 Q. Okay.

11 A. It's according to me.

12 Q. Okay.

13 A. There's no third party --

14 Q. Okay.

15 A. -- who gave us that distinction.

16 Q. Okay. Now, let's look at the third page of  
17 Exhibit 7.

18 This is the one where you have "IXL" and then  
19 right underneath it, it says "I," -- capital "I," new  
20 word, "e-x-c-e-l," "in math"; right?

21 A. Yeah, it says that.

22 Q. Now you're spelling it right out, what "IXL"

1 STATE OF CALIFORNIA ) ss.

2 CITY AND COUNTY OF SAN FRANCISCO )

3

4 I hereby certify that the witness in the  
5 foregoing deposition, PAUL MISHKIN, was by me duly sworn  
6 to testify to the truth, the whole truth, and nothing but  
7 the truth, in the within-entitled cause; that said  
8 deposition was taken at the time and place herein named;  
9 that the deposition is a true record of the witness's  
10 testimony as reported by me, a duly Certified Shorthand  
11 Reporter and a disinterested person, and was thereafter  
12 transcribed into typewriting by computer.

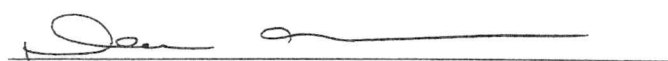
13 I further certify that I am not interested in  
14 the outcome of the said action, nor connected with, nor  
15 related to, any of the parties in said action, nor to  
16 their respective counsel.

17 IN WITNESS WHEREOF, I have hereunto set my hand  
18 and affixed by signature this 10th day of June 2010.

19

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DAWN A. STARK, CSR NO. 7847